

RICARDO MADRIGAL,
Plaintiff,
v.
L.W. RYDER, JR., *et al.*,
Defendants.

CASE NO. C04-2550JCC

ORDER GRANTING PLAINTIFF LEAVE
TO SUBMIT A PROPOSED SECOND
AMENDED COMPLAINT

On November 9, 2005, plaintiff re-filed his earlier motion to amend together with a declaration in which he requests leave of court to serve a copy of his amended complaint on

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1 Jimmie Evans, one of the individuals whom plaintiff identified as a proposed new defendant in his
2 amended complaint, but against whom plaintiff failed to adequately allege a cause of action.
3 Defendants oppose plaintiff's renewed motion to amend on the grounds that (1) plaintiff knew, or
4 should have known, of the role Jimmie Evans played in the events giving rise to this action at the
5 time he filed his amended complaint in October 2005; and, (2) this Court has already denied
6 plaintiff's request to add Jimmie Evans as a defendant in this action.

7 In its Order granting in part and denying in part plaintiff's prior motion to amend, the Court
8 noted that while plaintiff had identified Jimmie Evans as a defendant in his amended complaint, he
9 had alleged no specific facts supporting any constitutional claim against this defendant. In his
10 declaration in support of his renewed motion to amend, plaintiff offers additional facts which
11 suggest that Jimmie Evans may be an appropriate defendant in this action. However, plaintiff may
12 only pursue a claim against Jimmie Evans if he presents a proper pleading which adequately
13 alleges a cause of action against this individual. To date, plaintiff has presented no such pleading.
14 However, the Court deems it appropriate to give plaintiff an opportunity to do so before ruling on
15 his renewed motion to amend.

16 Accordingly, the Court does hereby ORDER as follows:

17 (1) Plaintiff may file a proposed second amended complaint not later than **December**
18 **23, 2005**, setting forth his claims against Jimmie Evans. Plaintiff is advised that an amended
19 pleading operates as a *complete* substitute for an original pleading. *See Ferdik v. Bonzelet*, 963
20 F.2d 1258, 1262 (9th Cir.) (citing *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d
21 1542, 1546 (9th Cir. 1990) (as amended), *cert. denied*, 506 U.S. 915 (1992)). Thus, if plaintiff
22 chooses to file a second amended complaint, plaintiff must set forth in that complaint not only his
23 claims against Jimmie Evans, but also his claims against defendants Leslie Ryder, John Richards,
24 Pat Glebe, and Hearing Officer Alstad.

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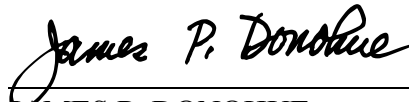
1 Plaintiff is reminded that, in order to adequately allege a cause of action against the named
2 defendants, he must allege facts showing how each individual caused or personally participated in
3 causing the harm alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir.
4 1981). Plaintiff must also identify the federal constitutional right he believes was violated by the
5 conduct of each named defendant.

6 (2) Plaintiff's renewed motion to amend his complaint (Dkt. No. 62) is RE-NOTED
7 for consideration on **December 30, 2005**. Should plaintiff fail to timely present a proposed
8 second amended complaint to this Court for review, plaintiff's renewed motion to amend will be
9 denied.

10 (3) The pretrial deadlines set forth in this Court's August 29, 2005, Order Regarding
11 Pretrial Preparations (Dkt. No. 67) are STRICKEN. The Court will re-set those dates once it has
12 ruled on plaintiff's renewed motion to amend.

13 (4) The Clerk is directed to send copies of this Order to plaintiff, to counsel for
14 defendants, and to the Honorable John C. Coughenour.

15 DATED this 6th day of December, 2005.

16 
17 JAMES P. DONOHUE
18 United States Magistrate Judge
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